IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

WRIT PETITION NO. 67 OF 2006

SHRI EKNATH SONU KANOLKAR,
RESIDENT OF ARAMBOL,
PERNEM-GOA. .... PETITIONER

Versus

GOA COASTAL ZONE MANAGEMENT
AUTHORITY (GCZMA),
THROUGH ITS MEMBER SECRETARY,
SHRI N.P.S. WARDE, HAVING OFFICE
OPPOSITE SALIGAO CEMINARY,
P.O. SALIGAO, BARDEZ-GOA. .... RESPONDENT

Shri D. Pangam, Advocate for the Petitioner.

Ms. Leena Dharwadkar, Addl Govt. Advocate for the Respondent.

CORAM: **SMT. RANJANA DESAI, J**.

DATE : **6th July, 2006**

ORAL ORDER :

In this Writ Petition the petitioner has challenged order dated 10/12/2003 passed by the Goa Coastal Zone Management Authority. A show cause notice under Section 5 of the Environment (Protection) Act, 1986 dated 10/12/2003 was issued to the petitioner. The first paragraph of the said show cause notice may be quoted.

> 'During a recent site visit by the officials of this office, it was shocking to notice several blatant violations of the CRZ Notification of 1991, in the No Development Zone (NDZ) of 200 mts. from the High Tide Line (HTL), designated under the Environment (Protection) Act, 1986, within the jurisdiction of your Panchayat. Some of these constructions are also found to be in the CRZ-I. The list of said violations as confirmed by the concerned Dy. Collector Bardez-II vide his report No. DY.COLL/PER/C.R.Z./1-52/2003/801 dated 11/11/2003 are as under:'

2. The notice further conveyed to the petitioner that no "constructions/developments" are permissible within the said No Developmental Zone (NDZ) of CRZ-III and CRZ-I areas, such as Arambol village, Pernem. The notice called upon the petitioner to submit his reply on or before 4/10/2002. The petitioner accordingly submitted his reply. In that reply the petitioner clearly stated that he was prejudiced in the matter of filing the reply because the show cause notice referred to the report of the Dy. Collector, Bardez, a copy of which had not been furnished to him. It was further stated that show cause notice also referred to the panchanama and the Resolution No.9 dated 9/1/2004 copies of which have not been furnished to him.

3. By the impugned order, the Goa Coastal Zone Management Authority rejected the petitioner's reply and concluded that the structure in question is constructed illegally and in violation of the CRZ

Notification 1991. The petitioner was directed to demolish the said structure. Being aggrieved by this order petitioner has approached this Court.

4. The learned Counsel for the petitioner contended that the petitioner was prejudiced because of the non supply of the report of the Dy. Collector, the panchanama and the Resolution dated 9/01/2004. The learned Counsel pointed that in the notice dated 10/12/2003 addressed by the Goa Coastal Zone Management Authority addressed to the Village Panchayat of Arambol the alleged unauthorised structure is described as admeasuring 25 sq. mts. whereas in the show cause notice dated 24/09/2004 issued to the petitioner, the same structure is described as admeasuring 76.82 mts. The learned Counsel further pointed that by Resolution dated 9/01/2004 the Village Panchayat has noted that the construction of room admeasuring about 25 sq. mts. carried out by the petitioner is not unauthorised. The learned Counsel for the petitioner made a serious grievance that a copy of this Resolution was not given to the petitioner before he was heard by the authority. He submitted that in the impugned order it is observed that all these documents were shown to the petitioner during the time of personal hearing. The learned Counsel contended that infact after the hearing was concluded, copies of these documents were shown to the

petitioner. He therefore, submitted that this is a case of violation of principles of natural justice. He submitted that in the interest of justice, it is necessary to set aside the impugned order.

5. The learned Counsel for the respondent on the other hand submitted that Village Panchayat resolution only speaks of construction of structure admeasuring 25 sq. mts. Therefore, the petitioner has carried out additional construction and presently it admeasures 76.82 sq. mts. She submitted that all the documents were shown to the petitioner at the time of hearing and therefore, no prejudice is caused to him. In support of this submission, the learned counsel for the respondent relied on ***Grosons pharmaceuticals (P) Ltd. and Anr.*** **Versus** ***State of U.P. And Ors.*** (2001 (8) SCC 604)

6. It is an admitted position that the petitioner was not furnished with the copies of report of Dy. Collector, copy of the panchanama and copy of Resolution dated 9/01/2004. These documents were merely shown to him at the time of hearing. There appears to be some discrepancy in the measurement of the structure in question. This discrepancy is tried to be explained by learned Counsel for the respondent by saying that subsequently the petitioner has carried out some additional construction. In any case, in my opinion

the petitioner was entitled to have copies of these documents before he was heard. The Resolution of the Village Panchayat states that the construction admeasuring 25 sq. mts. is not unauthorised. Therefore, the Resolution of the Village Panchayat should have been furnished to the petitioner.

7. In my opinion, the Judgment of the Supreme Court in ***Grosons pharmaceuticals (P) Ltd. and Anr.*** (supra) on which reliance was placed by the learned Counsel for the respondent has no application to the facts of this case. In that case, Supreme Court was dealing with the blacklisting of the appellant therein. The case involved interim blacklisting till the disposal of the suit. Investigation proceedings were pending. The observation of the Supreme Court that the only requirement of the law while passing such an order was to observe the principle of *audi alteram partem* which is one of the facets of the principles of natural justice and that it was not necessary to supply the material on the basis of which the charges against the appellants were based and that it was sufficient requirement of law that an opportunity to show cause was given to the appellant before the appellant was blacklisted will have to be read against the backdrop of these facts. In this case, the impugned order is a final order. The structure of the petitioner is going to be demolished and, therefore, in

my opinion, interest of justice required that the petitioner should have been given the above mentioned copies before he was heard. Hence, the following order :

8. The impugned order dated 10/12/2004 is quashed and set aside. The respondents are directed to furnish copies of the documents to petitioner, namely (a) the Report of the Dy. Collector of Bardez, (b) the Panchanama and (c) Resolution No.9 dated 9.1.2004 within one week from today. The petitioner will then file additional reply within a period of one week thereafter. The Goa Coastal Zone Management Authority will hear the petitioner or his Counsel afresh. The Authority will also hear the respondent and pass a fresh order. It is made clear that this Court has not expressed any opinion on the merits of the case. The Goa Coastal management Zone Authority shall dispose of the proceedings as expeditiously as possible and at any rate within a period of three months from today.

SMT. RANJANA DESAI, J.

NH/-